

Appl. No. 10/666,392  
Amdt. Dated January 26, 2005  
Reply to Office action of December 15, 2004

### **Amendments to the Specification:**

Please replace the paragraph titled Discovery beginning at page 2 of the application with the following rewritten paragraph:

#### DISCOVERY

I discovered my new variety of Willow Oak tree in the Summer, 2000, growing in a landscaped area of a shopping center parking lot in Athens, Clarke County, Georgia. The tree was growing among a group of cultivated Willow Oak trees which were planted at approximately the same time as my tree. The manager of the shopping center confirmed to me that all of the trees in the parking lot were installed as 2" field-grown trees sometime in 1986. The nursery trees in 1986 by a professional landscaper. The nursery source of the trees is unknown, so the age of my tree cannot be known with complete certainty. However, a 2" field grown tree would probably be approximately four (4) years old from a seed. I assume, therefore, It can therefore be assumed that my tree is approximately 22 years old.

Please replace the paragraph titled Industry Representation beginning at page 5 with the following rewritten paragraph:

#### Industry Representation

Cultivated Willow Oak is represented in the industry by primarily as seedling material. The species is typically pyramidal in youth, becoming spreading in maturity. As noted, the tree typically attains a height of 40' 60' and has a height to-width and width of 40'-60' and has a height-to- width ratio of approximately 1.0.

To my knowledge, there are only two other clonally propagated Willow Oaks available to the industry. These are Quercus phellos Hightower, 'QPSTA' PP13677 Hightower®, and Quercus phellos Wynstar, 'QPMTF' PP15217 Wynstar®. Both are recently introduced selections of Willow Oak.

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~~Oak. Hightower~~ Hightower® Willow Oak has a height-to-width ratio ~~on the order of 1.61, and of 1.61,~~ and its branching pattern is significantly different from my new tree. On a Hightower® Willow Oak, secondary branches emerge at 50° angles from the trunk and flatten with age to 80°-90° angles from the trunk. The final branching habit is primarily horizontal in its appearance with a slight uprightness at the top of the tree as new branches emerge. These statements are supported by claims and images in the patent for Willow Oak 'QPSTA' PP13677. Compared to the Hightower® Willow Oak, my new tree is more uprightly branching.

Wynstar® Willow Oak has a height-to-width ratio of 1.22 and a more horizontal branching habit than a Hightower® Willow Oak or my new tree. Branches emerge at 30° angles from the trunk and flatten with age to 80°-90° angles from the trunk. Images of the parent trees show a tendency for older branches to be slightly pendulous. Its branching habit is described as broad-spreading. A Wynstar® Willow Oak also has a lower branch density than the Hightower® Willow Oak or my new tree. These statements are supported by claims and images in the patent for Willow Oak 'QPMTF' PP15217. Compared the to Wynstar® Willow Oak, my new tree is more uprightly branching and has a higher branch density.

~~Wynstar a ratio of 1.22. After 22 years of growth, my new tree is 35' tall and 17' wide. This gives it a ratio of 2.06, After 22 years, my new tree is 35 feet tall and 17 feet wide (a height-to-width ratio of 2.06), making it significantly narrower than any other known willow oak cultivars or seedlings. Branches emerge at 20°-30° angles from the trunk and only flatten to 30°-40° angles from the trunk with age. My Willow Oak cultivar or seedling. As shown in Fig. 1, my new tree further~~ new tree also has significantly denser

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~~branching than other known Willow Oak cultivars or seedlings. any other known seedling or Wynstar® Willow Oak, as evidenced by Fig. 1.~~ In my experience, no other seedling or cultivar of Willow Oak has displayed the growth habit of my 'RT3' Willow Oak 'RT3'. My new tree is currently 12.59" in caliper at ~~a height 4'~~ above the ground. This caliper measurement is ~~approximately 50% greater than other Willow Oak larger than 50% of the other trees planted at the same site time at the same time site.~~ Since ~~the tree~~ it was planted in 1986, ~~the~~ its annual average caliper development has been about 0.59" per year. ~~Nursery-grown Nursery-grown~~ Willow Oak trees in this area have an average annual caliper increase of ~~approximately 0.75" 1.00". I expect my new tree to grow equally as well when grown in about 0.75" to 1.00", and I expect my new tree to perform as well once grown in a nursery setting.~~

Please replace the paragraph titled Fruit: beginning at page 8, with the following rewritten paragraph:

Fruit: An acorn, typical of the species; ovate, 1/4"-1/2" long and wide. The nut is covered only at the base by a short-stalked hemispherical-shaped cap. The nut is striated with brown-black lines. The cap is gray-brown in color. Similar to the species in all ways, except observed on the parent to be slightly smaller (about 25% smaller) than that generally of the species. None of the progeny have yet produced fruit, so it is uncertain whether this trait is heritable or affected by the parent tree's current growing conditions.

~~Observed on the parent to be smaller than that of the species; ovate, 1/4" 1/2" long and wide, short stalked and covered only at the base by a hemispherical shaped cap.~~